

## REMARKS

With this response, independent claim 23 has been amended. Consequently, claims 23-31 are pending and under consideration. In view of the amendment above, reconsideration of the present application is respectfully requested.

Independent claim 23 has been amended to recite administering to a “human” who has been directed to ingest “at least once daily” the beverage composition as defined in claim 23. Support for this amendment can be found throughout the application and specifically on page 5, lines 26-34 of the application as filed. Entry of the amendment is respectfully requested.

### 35 USC 112

Claims 23-31 were rejected as failing to comply with the written description requirement. It is respectfully requested that the rejection under 35 USC 112 be withdrawn in light of the amendment of “mammal” to “human” as suggested in the Office Action. Reconsideration is respectfully requested.

### 35 USC 102

Claims 23-31 were rejected under 35 USC 102(b) as being anticipated by Kohl. Without conceding the basis of the rejection, Applicants have amended claim 23 and respectfully request reconsideration.

Claim 23 has been amended to recite, inter alia, “A method of treating dental erosion comprising orally administering to a human, in need thereof and who has been directed to ingest at least once daily, for the purpose of treating said dental erosion, an effective amount of a beverage composition...” The “at least once daily” as been added as a limitation not found, disclosed, taught, or suggested in the prior art or the Board of Appeals’ decision. This type of temporal dosing requirement, such as “at least once daily”, is not disclosed, taught, or suggested in the prior art. Thus, since the prior art is silent regarding this element, the anticipatory rejection under 35 USC 102(b) over Kohl should be withdrawn. Reconsideration is respectfully requested.

35 USC 103

Claims 23-31 were rejected under 35 USC 103(a) as being unpatentable over Kohl for completeness of prosecution and purely arguendo and presumed for that purpose that “directed” carries weight as a limitation.

Without conceding the basis of the rejection and without prejudice, Applicants submit that the amendment made above with respect to claim 23 overcomes the “for completeness of prosecution and purely arguendo” rejection under 35 USC 103. Reconsideration is respectfully requested.

CONCLUSION

It should be understood that the above remarks and amendments are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the previous Office Actions but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion.

For the foregoing reasons and in view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. If, after reviewing this amendment, the Examiner feels that any issues remain that must be resolved before the application can be passed to issue, the Examiner is invited to contact the Applicant’s undersigned representative by telephone to resolve such issues.

Respectfully submitted,  
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